

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

**In re:**

**CIRCUIT CITY STORES, INC. *et al.*,  
Debtors.**

**Chapter 11**

**Case No. 08-35653-KRH  
(Jointly Administered)**

**OBJECTION OF BPP-VA LLC AND BPP-OH LLC  
TO DEBTORS' PROPOSED CURE AMOUNT**

COME NOW BPP-VA LLC ("BPP-VA") and BPP-OH LLC ("BPP-OH") (collectively, the "Landlords") and hereby object (the "Objection") to the Debtors' proposed "cure amount" for the Manassas Lease and the Cincinnati Lease (defined below) as listed on Exhibit B to the *Debtors' Motion for Orders under 11 U.S.C. §§ 105, 363, and 365 (I) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (II) Setting Sale Hearing Date, and (III) Authorizing and Approving (A) Sale of Certain Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases, and (C)*

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*Lease Rejection Procedures* (the "Motion"). In support of this Objection, the Landlords respectfully states as follows:

1. BPP-VA is the lessor and landlord of certain nonresidential real property located in Manassas, Virginia (the "Manassas Leased Premises").

2. Pursuant to a lease dated May 1, 1996 (the "Manassas Lease"), BPP-VA leases the Manassas Leased Premises to Circuit City Stores, Inc., one of the Debtors in the above-captioned bankruptcy cases (the "Debtor").

3. BPP-OH is the lessor and landlord of certain nonresidential real property located in Cincinnati, Ohio (the "Cincinnati Leased Premises").

4. Pursuant to a lease dated May 6, 1996 (the "Cincinnati Lease"), BPP-OH leases the Cincinnati Leased Premises to Debtor.

5. On November 10, 2008 (the "Petition Date"), the Debtor and various of its debtor affiliates filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Bankruptcy Court").

6. The Debtor currently remains in possession of, and enjoys the use and occupancy of, the Manassas and Cincinnati Leased Premises.

7. In Exhibit B to the Motion, the Debtors provide that the cure amount pursuant to Section 365 of the Bankruptcy Code for the Manassas Lease is \$13,850.00 (the "Manassas Proposed Cure Amount"). However, this Manassas Proposed Cure Amount is incorrect. As of December 15, 2008, the total cure amount with respect to the Manassas Lease is \$61,007.51 (the "BPP-VA Cure Amount").

8. In addition, in Exhibit B to the Motion, the Debtors provide that the cure amount pursuant to Section 365 of the Bankruptcy Code for the Cincinnati Lease is \$11,871.00 (the "Cincinnati Proposed Cure Amount"). However, the Cincinnati Proposed Cure Amount is incorrect. As of December 15, 2008, the total cure amount with respect to the Cincinnati Lease is \$80,240 (the "BPP-OH Cure Amount").

9. The BPP-VA Cure Amount and the BPP-OH Cure Amount do not include any (i) additional amounts due under the Manassas Lease and the Cincinnati Lease after December 15, 2008, (ii) additional amounts that have accrued or may accrue in the future under the Lease, such as attorneys' fees, interest, repair and maintenance costs, indemnification obligations, year-end adjustments for common area maintenance, percentage rent, or taxes, or other claims against the Debtor under the Lease, or (iii) actual pecuniary losses that have been or may be suffered by Taubman resulting from the Debtor's defaults under the Lease.

10. In addition to its objection to the Manassas Proposed Cure Amount and Cincinnati Proposed Cure Amount, BPP-VA and BPP-OH submit that any assumption and assignment of the Manassas Lease and Cincinnati Lease by the Debtor requires the Debtor to reimburse BPP-VA and BPP-Ohio for its attorneys' fees incurred in connection with these bankruptcy cases as part and parcel of the Debtor's cure obligation under Section 365 of the Bankruptcy Code.

11. Section 365(b)(I) of the Bankruptcy Code governs the financial obligations of a debtor that wishes to assume and assign a lease. Section 365(b)(1) provides in pertinent part as follows:

(b)(I) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee-

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default ... ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11. U.S.C. § 365(b)(1)(emphasis added).

12. The requirements of Section 365(b)(1)(B) include reimbursement to a landlord of sums incurred for attorneys' fees in connection with a bankruptcy case. See In re F&N Acquisition Corp., 152 B.R. 304, 308 (Bankr. W.D. Wash. 1993) (365(b)(1)(B) allows for recovery of attorneys' fees as a "pecuniary loss" if based upon the language of the lease); In re Westworld Cmty Healthcare, Inc., 95 B.R. 730, 733 (Bankr. C.D. Cal. 1989) (same); In re Ryan's Subs, Inc., 165 B.R. 465, 467-8 (Bankr. W.D. Mo. 1994) (same); and In re Child World, Inc., 161 B.R. 349, 353 (Bankr. S.D.N.Y. 1993) (same). The Manassas Lease and Cincinnati Lease require the Debtor to reimburse BPP-VA and BPP-Ohio for attorneys' fees incurred in connection with proceedings of this kind.

13. The BPP-VA Cure Amount and the BPP-Ohio Cure Amount are calculated based upon the best information currently available to BPP-VA and BPP-Ohio and their advisors and is set forth with their full reservation of rights to modify such amounts as and when any additional information becomes available. BPP-VA and BPP-Ohio further reserves all of its rights and remedies, including, without limitation, the right to object to any proposed assumption and assignment of the Manassas Lease and the Cincinnati Lease.

14. BPP-VA and BPP-Ohio respectfully requests that this Court treat this Objection as a written memorandum of points and authorities or waive any requirement that this Objection be accompanied by a written memorandum of points and authorities as described in Rule 9013-

1(H)(2) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Virginia.

**WHEREFORE**, BPP-VA and BPP-Ohio respectfully object to the Manassas Proposed Cure Amount of \$13,850 and the Cincinnati Proposed Cure Amount of \$11,871.00 as stated in Exhibit B to the Motion and instead represents that the BPP-VA Cure Amount of \$61,007.51 and the BPP-OH Cure Amount of \$80,240 is the correct cure amount for the Manassas Lease and the Cincinnati Lease as required by Section 365 of the Bankruptcy Code, subject to the reservations of rights described above.

**Dated: December 15, 2008**

**Respectfully Submitted,**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of December, 2008, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and was mailed, by U.S. Mail, first class, postage prepaid, to all persons on the attached Service List.

\_\_\_\_\_/s/ William A. Gray

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